

value as otherwise ascertained under 19 CFR 152.100 *et seq.*

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 87-89, 52 FR 24446, July 1, 1987; T.D. 89-1, 53 FR 51269, Dec. 21, 1988]

§ 152.2 Notification to importer of increased duties.

If the port director believes that the entered rate or value of any merchandise is too low, or if he finds that the quantity imported exceeds the entered quantity, and the estimated aggregate of the increase in duties on that entry exceeds \$15, he shall promptly notify the importer on Customs Form 29, specifying the nature of the difference on the notice. Liquidation shall be made promptly and shall not be withheld for a period of more than 20 days from the date of mailing of such notice unless in the judgment of the port director there are compelling reasons that would warrant such action.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 82-224, 47 FR 53728, Nov. 29, 1982; T.D. 93-66, 58 FR 44131, Aug. 19, 1993]

§ 152.3 Merchandise found not to correspond with invoice description.

When any merchandise not corresponding with the description given in the invoice is found by the examining officer, duties shall be assessed on the merchandise actually found. If the discrepancy appears conclusively to be the result of a mistake and not of any intent to defraud, no proceedings for forfeiture shall be taken. When the entire shipment does not agree with the invoice and there is no evidence of any intent to defraud, a new entry shall be required and the estimated duty paid on the original entry shall be refunded on liquidation as in the case of a nonimportation. (Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

Subpart B—Classification

§ 152.11 Harmonized Tariff Schedule of the United States.

Merchandise shall be classified in accordance with the Harmonized Tariff Schedule of the United States (19

U.S.C. 1202) as interpreted by administrative and judicial rulings.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 89-1, 53 FR 51269, Dec. 21, 1988]

§ 152.12 Applicable rates of duty.

Rates of duty shall be based on the detailed instructions in §141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

§ 152.13 Commingling of merchandise.

(a) *Notice to importer.* The port director shall give written notice to the importer as promptly as possible after any commingling is discovered.

(b) *Highest rate applicable.* Commingled merchandise shall be assessed with duty at the highest rate or rates applicable to any one kind of merchandise included in the commingling, unless:

(1) The quantity and value of each of the kinds so included can be readily ascertained by the usual method of CBP examination or by one or more of the methods specified in General Note 3(f), Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), or

(2) The conditions specified in General Note 3(f), HTSUS, are satisfied.

(c) *Time limit.* To obtain the benefit of General Note 3(f), HTSUS, the importer shall, within 30 days after the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, take appropriate action as follows:

(1) File with the port director evidence showing performance of the commercial settlement tests specified in General Note 3(f), HTSUS; or

(2) Perform the segregation under CBP supervision as specified in General Note 3(f), HTSUS; or

(3) File with the port director documentary proof which will satisfy him that the merchandise is entitled to the lower rate of duty under General Note 3(f), HTSUS.

(d) *Extension of time limit.* The 30-day limit for filing the evidence specified in

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General Note 3(f) or for performing the segregation specified in General Note 3(f), Harmonized Tariff Schedule of the United States, may be extended by the port director for additional periods of 30 days each, but not beyond 6 months from the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, if the importer makes written application for each extension and gives satisfactory reasons for its allowance.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 89-1, 53 FR 51270, Dec. 21, 1988; T.D. 95-29, 60 FR 18349, Apr. 11, 1995; T.D. 00-81, 65 FR 68887, Nov. 15, 2000; T.D. 02-14, 67 FR 15099, Mar. 29, 2002; CBP Dec. 05-31, 70 FR 53062, Sept. 7, 2005]

§ 152.16 Judicial changes in classification.

The following procedures apply to changes in classification made by decision of either the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit, except to the extent otherwise provided in a ruling published in the Customs Bulletin pursuant to § 177.10(a) of this chapter:

(a) *Identical merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to all merchandise identical with that passed on by the court which is covered by unliquidated entries, whether for consumption or warehouse.

(b) *Similar merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to merchandise, though not identical with the merchandise the subject of the court's decision, if its classification is affected by such principles, provided that it has been entered or withdrawn for consumption after 30 days from the date of publication of the court's decision in the Customs Bulletin.

(c) *Higher rate.* If a court decision overruling a protest contains a definite statement that a higher rate than that assessed by the port director was properly chargeable, such higher rate shall be applied to all merchandise, whether identical or similar to that passed on by the court, which is affected by the principles of the court's decision and

which is entered or withdrawn for consumption after 30 days from the date of the publication of the court's decision in the Customs Bulletin.

(d) *American manufacturer's petition upheld.* If the court upholds a petition made by an American manufacturer, producer, or wholesaler under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), the principles of the court's decision shall be applicable to all merchandise of that character which is entered or withdrawn for consumption after the date of publication of the court's decision in the Customs Bulletin. The liquidation of entries covering merchandise of that character made after publication of the court's decision shall be suspended in accordance with § 159.57 of this chapter pending any rehearing or review, then liquidated, or, if necessary, reliquidated in accordance with the final judicial decision.

(e) *Other decisions adverse to Government.* Unless the Commissioner of Customs otherwise directs, the principles of any court decision adverse to the Government (except for a decision upholding an American manufacturer's petition as covered in paragraph (d) of this section) shall be applied to unliquidated entries and protested entries which have not been denied in whole or in part and in which the same issue is involved as soon as the time within which an application for a rehearing or review may be filed has expired without such application having been made. See § 176.31 of this chapter for the treatment of entries which are the subject of a court decision.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 75-186, 40 FR 31928, July 30, 1975; T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 152.17 Changes in classification by Congress or by Presidential Proclamation.

When a rate of Customs duty or internal revenue tax imposed upon or by reason of importation is changed by an act of Congress or by a proclamation of the President, the new rate shall be applied in accordance with the detailed instructions in § 141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of